TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5—WIRE OR RADIO COMMUNICATION

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This chapter is referred to in sections 15, 702, 721, 741, 754 of this title; title 7 section 923; title 15 section 44; title 18 section 2511; title 40 section 791; title 41 sections 43, 356; title 45 sections 851, 853.

SUBCHAPTER I—GENERAL PROVISIONS

§ 152. Application of chapter

[See main edition for text of (a)]

(b) Except as provided in section 224 of this title and subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

(As amended Feb. 21, 1978, Pub. L. 95-234, § 5, 92 Stat. 35.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-234 substituted "Except as provided in section 224 of this title and subject" for "Subject".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7 of Pub. L. 95-234 provided that: "The amendments made by this Act [enacting section 224 of this title, amending sections 152, 503, and 504 of this title, repealing sections 510 of this title, and enacting provisions set out as a note under section 609 of this title] shall take effect on the thirtieth day after the date of enactment of this Act [Feb. 21, 1978]; except that the provisions of sections 503(b) and 510 of the Communications Act of 1934 [sections 503(b) and 510 of this title], as in effect on such date of enactment, shall continue to constitute the applicable law with the respect to any act or omission which occurs prior to such thirtieth day."

SUBCHAPTER II—COMMON CARRIERS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 153, 503, 504, 741, 753 of this title.

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person whose rates or charges are regulated by the

Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) Within 180 days from February 21, 1978, the Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions not pre-empted by activities of Commission; certification of State regulation to Commission

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

(d) Determination of just and reasonable rates; definition

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(e) Termination date for applicability of criteria for determination of just and reasonable rates

Upon the expiration of the 5-year period that begins on February 21, 1978, the provisions of subsection (d) of this section shall cease to have any effect.

(June 19, 1934, ch. 652, title II, § 224, as added Feb. 21, 1978, Pub. L. 95-234, § 6, 92 Stat. 35.)

EFFECTIVE DATE

Section effective on the thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 152 of this title.

SUBCHAPTER III—SPECIAL PROVISIONS RELATING TO RADIO

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 503, 741, 753 of this title.

PART I—GENERAL PROVISIONS

§ 305. Government owned stations

TRANSFER OF FUNCTIONS

The Office of Telecommunications Policy, referred to in Reorg. Plan No. 1 of 1970, eff. Apr. 20, 1970, 35 F.R. 6421, 84 Stat. 2083, and Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, set out under this section in the 1976 edition of this Code, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, and the functions of the Office and the Director thereof were transferred to the Secretary of Commerce by section 5B of Reorg. Plan No. 1 of 1977, except for those functions of the Office and the Director thereof relating to the preparation of Presidential telecommunications policy operations and the disposition of appeals from assignments of radio frequencies to stations of the United States Government, which were transferred to the President by said section 5B of Reorg. Plan No. 1 of 1977 with power to delegate within the Executive Office of the President.

EXECUTIVE ORDER NO. 11556

Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, as amended by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 2494, which related to the assignment of telecommunication functions, was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out as a note below.

EX. ORD. NO. 12046. TRANSFER OF TELECOMMUNICATIONS FUNCTIONS

Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in the Appendix to Title 5, Government Organization and Employees], the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended. Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section

301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

SECTION 1

Reorganization Plan

1-1. Implementation of Reorganization Plan

1-101. The transfer of all the functions of the Office of Telecommunications Policy and of its Director, as provided by Section 5B of Reorganization Plan No. 1 of 1977 (42 FR 56101), is hereby effective.

1-102. The abolition of the Office of Telecommunications Policy, as provided by Section 3C of Reorganization Plan No. 1 of 1977, is hereby effective.

1-103. The establishment of an Assistant Secretary for Communications and Information, Department of Commerce, as provided by Section 4 of Reorganization Plan No. 1 of 1977, is hereby effective.

1-2. Telecommunications Function

1-201. Prior to the effective date of Reorganization Plan No. 1 of 1977, the Office of Telecommunications Policy and its Director had the functions set forth or referenced by: (1) Section 1 of Reorganization Plan No. 1 of 1970 (5 U.S.C. App.), (2) Executive Order No. 11556 of September 4, 1970, as amended (47 U.S.C. 305 note), (3) Executive Order No. 11191 of January 4, 1965, as amended (47 U.S.C. 721 note), (4) Executive Order No. 10705 of April 17, 1957, as amended (47 U.S.C. 606 note), and (5) Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556 and entitled "Establishment of the National Communications System."

1-202. So much of those functions which relate to the preparation of Presidential telecommunications policy options or to the disposition of appeals from assignments of radio frequencies to stations of the United States Government were transferred to the President. These functions may be delegated within the Executive Office of the President and the delegations are set forth in this Order at Sections 3-1 through 4-3.

1-203. Those telecommunications functions which were not transferred to the President were transferred to the Secretary of Commerce. Functions transferred to the Secretary are set forth in this Order at Sections 2-1 through 2-5.

SECTION 2

Functions Transferred to Commerce

2-1. Radio Frequencies

2-101. The authority of the President to assign frequencies to radio stations or to classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, was transferred to the Secretary of Commerce.

2-102. This authority, which was originally vested in the President by Section 305(a) of the Communications Act of 1934, as amended (47 U.S.C. 305(a)), was transferred and assigned to the Director of the Office of Telecommunications Policy by Section 1 of Reorganization Plan No. 1 of 1970 and Section 3 of Executive Order No. 11556.

2-103. The authority to assign frequencies to radio stations is subject to the authority to dispose of appeals from frequency assignments as set forth in Section 3-2 of this Order.

2-2. Construction of Radio Stations

2-201. The authority to authorize a foreign government to construct and operate a radio station at the seat of government of the United States was transferred to the Secretary of Commerce. Authorization for the construction and operation of a radio station pursuant to this authority and the assignment of a frequency for its use can be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Federal Communications Commission.

2-202. This authority, which was originally vested in the President by Section 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305), was delegated to the Director of the Office of Telecommunications Policy by Section 5 of Executive Order No. 11556.

2-3. Communications Satellite System

2-301. Certain functions relating to the communications satellite system were transferred to the Secretary of Commerce. Those functions were delegated or assigned to the Director of the Office of Telecommunications Policy by Executive Order No. 11191, as amended by Executive Order No. 11556. The functions include authority vested in the President by Section 201(a) of the Communications Satellite Act of 1962 (76 Stat. 421, 47 U.S.C. 721(a)). These functions are specifically set forth in the following provisions of this Section.

(a) Aid in the planning and development of the commercial communications satellite system and aid in the execution of a national program for the operation of such a system.

(b) Conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation.

(c) Coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act [section 701 et seq. of this title].

(d) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general government purposes in consonance with Section 201(a)(6) of the Act [section 721(a)(6) of this title].

(e) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(f) Assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(g) Serve as the chief point of liaison between the President and the Corporation.

(h) The Secretary of Commerce shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act (47 U.S.C. 744(a)).

(i) The Secretary of Commerce shall coordinate the performance of these functions with the Secretary of State. The Corporation and other concerned Executive agencies shall provide the Secretary of Commerce with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

2-4. Other Telecommunications Functions

Certain functions assigned, subject to the authority and control of the President to the Director of the Office of Telecommunications Policy by Section 2 of Executive Order No. 11556 were transferred to the Secretary of Commerce. These functions, subject to the authority and control of the President, are set forth in the following subsections.

2-401. The Secretary of Commerce shall serve as the President's principal adviser on telecommunications

policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-402. The Secretary of Commerce shall advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

2-403. The Secretary of Commerce shall conduct studies and evaluations concerning telecommunications research and development, and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems. The Secretary shall advise appropriate agencies, including the Office of Management and Budget, of the recommendations which result from such studies and evaluations.

2-404. The Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications conferences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.

2-405. The Secretary of Commerce shall provide for the coordination of the telecommunications activities of the Executive Branch, and shall assist in the formulation of policies and standards for those activities, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

2-406. The Secretary of Commerce shall develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-407. The Secretary of Commerce shall ensure that the Executive Branch views on telecommunications matters are effectively presented to the Federal Communications Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

2-408. The Secretary of Commerce shall establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States. Agencies shall consult with the Secretary of Commerce to ensure that their conduct of telecommunications activities is consistent with those policies.

2-409. The Secretary of Commerce shall develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

2-410. The Secretary of Commerce shall conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

2-411. The Secretary of Commerce shall coordinate Federal telecommunications assistance to State and local governments.

2-412. The Secretary of Commerce shall conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

2-413. The Secretary of Commerce shall contract for studies and reports related to any aspect of assigned responsibilities.

2-414. The Secretary of Commerce shall participate with the National Security Council and the Director of the Office of Science and Technology Policy in carrying out their functions under Sections 4-1, 4-2, and 4-3 of this Order, and may perform specific staff services for them as requested.

2-5. Consultation Responsibilities

2-501. The authority to establish coordinating committees, as assigned to the Director of the Office of Telecommunications Policy by Section 10 of Executive Order No. 11556, was transferred to the Secretary of Commerce.

2-502. As permitted by law, the Secretary of Commerce shall establish such interagency committees and working groups composed of representatives of interested agencies, and shall consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Secretary. As permitted by law, the Secretary also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

SECTION 3

Functions Assigned to the Office of Management and Budget

3-1. Telecommunications Procurement and Management

3-101. The responsibility for serving as the President's principal adviser on procurement and management of Federal telecommunications systems and the responsibility for developing and establishing policies for procurement and management of such systems, which responsibilities were assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(b) of Executive Order No. 11556, were transferred to the President.

3-102. These functions are delegated to the Director of the Office of Management and Budget.

3-2. Radio Frequency Appeals

3-201. The authority to make final disposition of appeals from frequency assignments by the Secretary of Commerce for radio stations belonging to and operated by the United States, which authority was vested in the President by Section 305(a) of the Communications Act of 1934 (47 U.S.C. 305(a)) and transferred to the Director of the Office of Telecommunications Policy by Reorganization Plan No. 1 of 1970 (5 U.S.C. App.), was transferred to the President.

3-202. This function is delegated to the Director of the Office of Management and Budget.

SECTION 4

Functions Assigned to the National Security Council and the Office of Science and Technology Policy

4-1. Emergency Functions

4-101. The war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), which were delegated to the Director of the Office of Telecommunications Policy by the Provisions of Section 4 of Executive Order No. 10705, were transferred to the President.

4-102. The Director of the Office of Science and Technology Policy shall prepare to direct the exercise of these functions, and the National Security Council shall prepare to exercise appropriate policy direction, should the President so instruct. These instructions would be given in accordance with the National Emergencies Act (90 Stat. 1255, 50 U.S.C. 1601).

4-103. The Director of the Office of Science and Technology Policy shall prepare Presidential policy options with respect to the evaluation by appropriate means, including suitable tests, of the capability of existing and planned communications systems to meet national security and emergency preparedness require-

ments, and report the results and any recommended remedial actions to the President and the National Security Council.

4-2. National Communications System

4-201. The responsibility for policy direction of the development and operation of a National Communications System, which was assigned to the Director of the Office of Telecommunications Policy by the Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556, was transferred to the President.

4-202. The function is more particularly identified, and is delegated to the National Security Council, in the amendments made by Section 6-101 of this Order to the President's Memorandum of August 21, 1963.

4-3. Planning Functions

4-301. The function of coordinating the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency, which function was assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(h) of the Executive Order No. 11556, was transferred to the President.

4-302. The National Security Council shall assist the President in the performance of this function.

SECTION 5

Related Telecommunications Functions

5-1. The Department of Commerce

5-101. The Secretary of Commerce shall continue to perform the following functions previously assigned by Section 13 of Executive Order No. 11556:

(a) Perform analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary in the performance of assigned responsibilities for the management of electromagnetic spectrum.

(b) Conduct research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility.

(c) Conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

5-102. The Secretary of Commerce shall participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

5-2. Department of State

5-201. With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Commission's regulatory and policy responsibility in this area.

5-202. The Secretary of State shall continue to perform the following functions previously assigned by Executive Order No. 11191, as amended:

(a) Exercise the supervision provided for in Section 201(a)(4) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(a)(4)), be responsible, although the Secretary of Commerce is the chief point of liaison, for instructing the Communications Satellite Corporation in its role as the designated United States representative to the International Telecommunications Satellite Organization; and direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962, as amended [section 701 et seq. of this title].

(b) Coordinate, in accordance with the applicable interagency agreements, the performance of these functions with the Secretary of Commerce, the Federal Communications Commission, other concerned Executive agencies, and the Communications Satellite Corporation (see 47 U.S.C. 731-735). The Corporation and other concerned Executive agencies shall provide the Secretary of State with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

5-3. General Services Administration

The Administrator of General Services shall coordinate with the Secretary of Commerce, the Director of the Office of Science and Technology Policy, and the National Security Council the development of policies, plans, programs, and standards for the emergency use of telecommunications.

SECTION 6

General Provisions

6-1. Transfer Provisions

6-101. In order to reflect the transfer and assignment made by Section 5B of Reorganization Plan No. 1 of 1977 and Section 13 [*sic*] of this Order, the President's Memorandum of August 21, 1963, entitled "Establishment of the National Communications System" (28 FR 9413, 3 CFR 1959-1963 Compilation) as amended by Section 8 of Executive Order No. 11556, is further amended as follows:

(a) Delete the first paragraph after the heading "Executive Office Responsibilities" and substitute therefor:

"The National Security Council shall be responsible for Presidential policy options concerning the development and operation of the National Communications System (NCS) and shall:".

(b) Delete the last two paragraphs in that part of the memo headed "Executive Office Responsibilities" and substitute therefor:

"In performing these functions, the National Security Council will consult with the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, and the Administrator of General Services, as appropriate; will establish arrangements for interagency consultation to ensure that the NSC will meet essential needs of all government agencies; and will be responsible for carrying on the work formerly done by the Subcommittee on Communications of the Executive Committee of the National Security Council. In addition to staff regularly assigned, the National Security Council and the Director of the Office of Science and Technology Policy may arrange for the detail or temporary assignment of communications and other specialists from any agency.

"The Director of the Office of Management and Budget, in consultation with the National Security Council, the Secretary of Commerce, the Administrator of General Services, and the Executive Agent of the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.".

(c) In the paragraph after the heading "Agency Responsibilities", delete "Director of the Office of Telecommunications Policy" and substitute therefor "National Security Council."

6-102. The primary responsibility for performing all administrative support and service functions that are related to functions transferred from the Office of Telecommunications Policy and its Director to the President, including those functions delegated or as-

signed within the Executive Office of the President, are transferred to the Office of Administration. The Domestic Policy Staff shall perform such functions related to the preparation of Presidential telecommunications policy options as the President may from time to time direct.

6-103. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, assigned, or delegated as provided in this Order are hereby transferred as appropriate.

6-104. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided in this Order, including the transfer of funds, records, property, and personnel.

6-2. AMENDMENTS

In order to reflect the transfers provided by this Order, the following conforming amendments and revocations are ordered:

6-201. Section 306 of Executive Order No. 11051, as amended [set out under section 2271 of Title 50; Appendix, War and National Defense], is further amended to read:

"Sec. 306. *Emergency telecommunications.* The Administrator of General Services shall be responsible for coordinating with the National Security Council in planning for the mobilization of the Nation's telecommunications resources in time of national emergency.".

6-202. Executive Order No. 11490, as amended [set out under section 2251 of Title 50, Appendix, War and National Defense] is further amended by:

(1) substituting "National Security Council" for "Office of Telecommunications Policy (35 FR 6421)" in Section 401(27), and

(2) substituting the number of this Order for "11556" and deleting references to Executive Order No. 10705 [set out under section 606 of this title] in Sections 1802 and 2002(3).

6-203. Executive Order No. 11725, as amended [set out under section 2271 of Title 50, Appendix, War and National Defense], is further amended by substituting the number and date of this Order for the reference to Executive Order No. 11556 of September 4, 1970 in Section 3(16).

6-204. Executive Orders No. 10705, as amended [set out under section 606 of this title], No. 11191, as amended [set out under section 721 of this title], and No. 11556, as amended, are revoked.

6-3. GENERAL

6-301. All Executive agencies to which functions are assigned pursuant to this Order shall issue such rules and regulations as may be necessary to carry them out.

6-302. All Executive agencies are authorized and directed to cooperate with the departments and agencies to which functions are assigned pursuant to this Order and to furnish them such information, support and assistance, not inconsistent with law, as they may require in the performance of those functions.

6-303. (a) Nothing in this Order reassigns any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works], nor does anything in this Order impair the existing authority of the Administrator of General Services to provide and operate telecommunications services and to prescribe policies and methods of procurement, or impair the policy and oversight roles of the Office of Management and Budget.

(b) In carrying out the functions in this Order, the Secretary of Commerce shall coordinate activities as appropriate with the Federal Communications Commission and make appropriate recommendations to it as the regulator of the private sector. Nothing in this Order reassigns any function vested by law in the Federal Communications Commission.

6-304. This Order shall be effective March 26, 1978.

JIMMY CARTER.

§ 312. Administrative sanctions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 224, 402 of this title.

§ 317. Announcement of payment for broadcast

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 503 of this title.

PART II—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 153, 154, 382, 503, 504 of this title.

PART III—RADIO INSTALLATIONS ON VESSELS CARRYING PASSENGERS FOR HIRE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 153, 503, 504 of this title.

PART IV—ASSISTANCE FOR PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING; GENERAL PROVISIONS

SUBPART A—ASSISTANCE FOR PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES

§ 390. Declaration of purpose

The purpose of this subpart is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

(As amended Nov. 2, 1978, Pub. L. 95-567, Title I, § 101, 92 Stat. 2405.)

AMENDMENTS

1978—Pub. L. 95-567 expanded the scope of the section to authorize construction financing for telecommunications facilities other than television and radio broadcasting, and assistance in the planning, as well as the construction, of such facilities, and substituted provisions relating to the objectives of this subpart for former provision relating to the demonstration of the use of telecommunication technologies for the distribution of information.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403 of Pub. L. 95-567 provided that: "The provisions of this Act [enacting section 224 of this

title, amending sections 152, 503, and 504 of this title, repealing section 510 of this title, and enacting provisions set out as a note under section 152 of this title], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [Nov. 2, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 394 of this title.

§ 391. Authorization of appropriations

There are authorized to be appropriated $40,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

(As amended Nov. 2, 1978, Pub. L. 95-567, title I, § 102, 92 Stat. 2405.)

AMENDMENTS

1978—Pub. L. 95-567 substituted provisions authorizing appropriations of $40,000,000 for the fiscal years 1979 to 1981 for provisions authorizing appropriations of $7,500,000 for July 1, 1976 through September 30, 1976 and $30,000,000 for fiscal year ending September 30, 1977, provision that such funds would remain available until expended for provision that such funds would remain available for one year after the last day of the fiscal year, and also made allowance for the funds to be used for the cost of administering this section.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 393, 399 of this title.

§ 392. Grants for construction

(a) Applications for grants

For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that—

(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State;

(2) the operation of such public telecommunications facilities will be under the control of the applicant;

(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

(4) such public telecommunications facilities will be used only for the provision of public telecommunications services;

(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

(6) the applicant will make the most efficient use of the grant.

(b) Amount of grant

Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amount shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

(c) Information and assurances

The Secretary may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligible requirements of subsection (a) of this section to receive construction assistance.

(d) Studies

Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary, if such studies are conducted through the use of funds received under this section.

(e) Rules and regulations

The Secretary shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

(f) Minorities and women

In establishing criteria for grants pursuant to section 393 of this title and in establishing procedures relating to the order of priority established in subsection (e) of this section in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds

under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

(g) Recovering funds

If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a)(1) of this section; or

(2) such facilities cease to be used only for the provision of public telecommunications services (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

(h) Recordkeeping requirements

Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all public telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(i) Accessibility of records

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.

(As amended Nov. 2, 1978, Pub. L. 95-567, title I, § 103(a), 92 Stat. 2405.)

AMENDMENTS

1978—Pub. L. 95-567 completely revised and restructured existing provisions, adding provisions requiring applicant to submit a 5 year plan, allowing nonprofit educational or cultural groups to apply for grants, authorizing the Secretary to make grants up to 75 percent of the cost, establishing rules and regulations for approving grants and administering grants made before, on or after Nov. 2, 1978, and striking out provisions for an 8½ percent limit on grants and criteria for awarding grants.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

ADMINISTRATION OF GRANTS

Section 103(b) of Pub. L. 95-567 provided that:

"(1) The provisions of section 392(g) of the Communications Act of 1934, [subsec. (g) of this section], as added by subsection (a), shall apply to any grant made under section 392 of such Act [this section] before, on, or after the date of the enactment of this Act [Nov. 2, 1978]. Any authority and responsibilities of the Secretary of Health, Education, and Welfare regarding the administration of such grants are hereby transferred to the Secretary of Commerce.

"(2) Subject to the provisions of section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), the following are hereby transferred to the Secretary of Commerce for appropriate allocation—

"(A) the personnel employed in connection with or in support of, or as an integral part of the mission of, the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

"(B) the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A).

Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds originally were authorized and appropriated.

"(3) The Director of the Office of Management and Budget, in consultation with the Secretary of Commerce and the Secretary of Health, Education, and Welfare, shall—

"(A) make such determinations as may be necessary with regard to the transfer of the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

"(B) make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A);

as the Director may deem necessary to accomplish the purposes of this Act [See Short Title of 1978 Amendment note set out under section 609 of this title] and the amendments made by this Act."

§ 392a. Repealed. Pub. L. 95-567, title II, § 201, Nov. 2, 1978, 92 Stat. 2409

Section, act June 19, 1934, ch. 652, title III, § 392A, as added June 5, 1976, Pub. L. 94-309, § 8, 90 Stat. 685, related to demonstrations of telecommunications, grants and contracts.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

§ 393. Criteria for approval and expenditures by Secretary

(a) Construction and planning grants

The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning

grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

(b) Basis for determination

The Secretary shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) of this section and designed to achieve—

(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) the expansion of the service areas of existing public telecommunications entities;

(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(c) Extending services to new areas

Of the funds appropriated pursuant to section 391 of this title for any fiscal year, not less than 75 percent shall be available to extend delivery of public telecommunications services to areas not receiving such services through grants for facilities of new and existing public telecommunications entities, and preoperational expenses associated with such facilities. In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits.

(d) Noncommercial radio broadcast station facilities

Of the sums appropriated pursuant to section 391 of this title for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.

(As amended Nov. 2, 1978, Pub. L. 95-567, title I, § 104, 92 Stat. 2408.)

AMENDMENTS

1978—Pub. L. 95-567 struck out provisions dealing with keeping records and access to records by Secretary and Comptroller General and added provisions dealing with criteria for approval and expenditures by Secretary. See sections 392(h) and 395(h) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 392, 396 of this title.

§ 394. Long-range planning for facilities

(a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390 of this title. Such plan shall include a detailed 5-year projection of the broadcast and nonbroadcast public telecommunications facilities required to meet such objectives, and the expenditures necessary to provide such facilities.

(b) The plan required in subsection (a) of this section shall be updated annually, and a summary of the activities of the Secretary in implementing the plan, shall be submitted concurrently to the President and the Congress not later than the 31st day of December of each year.

(As amended Nov. 2, 1978, Pub. L. 95-567, title I, § 105, 92 Stat. 2409.)

AMENDMENTS

1978—Pub. L. 95-567 substituted provisions dealing with long-range planning for facilities for provisions authorizing the Secretary to establish rules and regulations necessary for this subpart. See section 392(e) of the title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SUBPART B—TELECOMMUNICATIONS DEMONSTRATIONS

§ 395. Assistance for demonstration projects

(a) Authorization for grants and contracts

It is the purpose of this subpart to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with, public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

(b) Application approval

The Secretary may approve an application submitted under subsection (a) of this section if he determines that—

(1) the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this subpart;

(2) demonstrations and related activities assisted under this subpart will remain under the administration and control of the applicant;

(3) the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

(c) Contract with applicant

Upon approving any application under this subpart with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The

Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(d) Use of funds

Funds made available pursuant to this subpart shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incidental to the installation of such facilities or equipment.

(e) Nonbroadcast telecommunications facilities

For purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, or other means.

(f) Funding

The funding of any demonstration pursuant to this subpart shall continue for not more than 3 years from the date of the original grant or contract.

(g) Summary and evaluation

The Secretary shall require that the recipient of a grant or contract under this subpart submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

(h) Recordkeeping requirements; accessibility

(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.

(i) Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under this subpart or to determining the amounts of grants for such projects.

(j) Assistance

The Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Corporation.

(k) Authorization of appropriations

There are authorized to be appropriated $1,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary to carry out the provisions of this subpart. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.

(June 19, 1934, ch. 652, title III, § 395, as added Nov. 2, 1978, Pub. L. 95-567, title II, § 201, 92 Stat. 2409.)

PRIOR PROVISIONS

A prior section 395, act June 19, 1934, ch. 652, title III, § 395, as added May 1, 1962, Pub. L. 87-447, 76 Stat. 67, and amended Nov. 7, 1967, Pub. L. 90-129, title II, § 201(2), 81 Stat. 367; June 5, 1976, Pub. L. 94-309, § 5, 90 Stat. 684, relating to assistance of the Secretary by the Commission, was repealed by Pub. L. 95-567, title II, § 201, Nov. 2, 1978, 92 Stat. 2409.

EFFECTIVE DATE

Section effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SUBPART C—CORPORATION FOR PUBLIC BROADCASTING

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 397, 398 of this title.

§ 396. Corporation for Public Broadcasting

(a) Congressional declaration of policy

The Congress hereby finds and declares that—

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services;

(3) expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels;

(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(5) it furthers the general welfare to encourage public telecommunications services

which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

(6) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States; and

(7) a private corporation should be created to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.

[*See main edition for text of* (b) *and* (c)]

(d) Election of Chairman and Vice Chairman or Vice Chairmen; nonfederal employment status of members; compensation and travel expenses

(1) The members of the Board shall annually elect one of their number as Chairman. The members of the Board shall also elect one or more of them as a Vice Chairman or Vice Chairmen.

[*See main edition for text of* (2)]

(e) Officers and employees; term of office, compensation, qualifications, and removal; political party affiliation, political test or qualification when taking personnel actions

(1) The Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation, other than the Chairman and any Vice Chairman, may receive any salary or other compensation from any source other than the Corporation during the period of his employment by the Corporation. All officers shall serve at the pleasure of the Board.

(2) Except as provided in the second sentence of subsection (c)(1) of this section, no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

[*See main edition for text of* (f)]

(g) Purposes and activities of the Corporation; powers under the District of Columbia Nonprofit Corporation Act

(1) In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—

(A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

(B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of public telecommunications services so that all public telecommunications entities may disseminate such services at times chosen by the entities;

(C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and

(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities.

(2) In order to carry out the purposes set forth in subsection (a) of this section, the Corporation is authorized to—

(A) obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

(B) contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use by public telecommunications entities, except that—

(i) to the extent practicable, proposals for the provision of assistance by the Corporation in the production or acquisition of programs or series of programs shall be evaluated on the basis of comparative merit by panels of outside experts, representing diverse interests and prespectives, appointed by the Corporation; and

(ii) nothing in this subparagraph shall be construed to prohibit the exercise by the Corporation of its prudent business judgement with respect to any contract or grant to assist in the production or acquistion of any program or series of programs recommended by any such panel;

(C) make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of public telecommunications services by such entities, particularly innovative approaches to such services, and other costs of operation of such entities;

(D) establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;

(E) arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and trans-

mission of public telecommunications services to public telecommunications entities;

(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

(H) make grants or contracts for the use of nonbroadcast telecommunications technologies for the dissemination to the public of public telecommunications services; and

(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a) of this section.

Nothing contained in this paragraph shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-1001 et seq.), except that the Corporation is prohibited from—

(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system, interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

(4) All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as are set forth in subsection (k)(4) of this section.

(5) The Corporation, in consultation with public broadcast stations, shall undertake a study to determine the manner in which personal services of volunteers should be included in determing the level of non-Federal financial support pursuant to subsection (k)(2)(A) of this section. The study, which shall be completed not later than 180 days after November 2, 1978, shall include an examination of any fiscal, administrative, or other factors which should be taken into account in determining the manner in which such services should be so included, and shall include proposed valuation standards. Upon completion, the study and the proposed valuation standards shall be submitted to the Comptroller General of the United States for approval.

(6) The Corporation, in consultation with interested parties, shall create a 5-year plan for the development of public telecommunications services. Such plan shall be updated annually by the Corporation.

(h) Free or reduced rate interconnection service; access to facilities

(1) Nothing in this chapter, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Commission may prescribe.

(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.

(i) Report to Congress

(1) The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President for transmittal to the Congress on or before the 15th day of February of each year. The report shall include—

(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;

(B) a comprehensive and detailed inventory of funds distributed by Federal agencies to public telecommunications entities during the preceding fiscal year; and

(C) the summary of the annual report provided to the Secretary pursuant to section 398(b)(4) of this title.

(2) The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (*l*) of this section, or any other matter which such committees may determine.

[*See main edition for text of (j)*]

(k) Financing; open meetings and financial records

(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the "Fund"), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Fund for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during

the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $121,000,000 for fiscal year 1978, $140,000,000 for fiscal year 1979, and $160,000,000 for fiscal year 1980

(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, and 1983, an amount equal to 50 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $180,000,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, and $220,000,000 for fiscal year 1983.

(D) Funds appropriated under this subsection shall remain available until expended.

(2)(A) The funds authorized to be appropriated by this subsection shall be used by the Corporation, in a prudent and financially responsible manner, solely for its grants, contracts, and administrative costs, except that the Corporation may not use any funds appropriated under this subpart for purposes of conducting any reception, or providing any other entertainment, for any officer or employee of the Federal Government or any State or local government. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter.

(3)(A) The Corporation shall reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to—

(i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed is $88,000,000 or more, but less than $121,000,000;

(ii) not less than 45 percent of such funds in each fiscal year in which the amount disbursed is $121,000,000 or more, but less than $160,000,000; and

(iii) not less than 50 percent of such funds in each fiscal year in which the amount disbursed is $160,000,000 or more.

(B)(i) The Corporation shall establish an annual budget according to which it shall make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, for acquisition of such programs by public telecommunications entities, for interconnection facilities and operations, for distribution of funds among public telecommunications entities, and for engineering and program-related research. A significant portion of funds available under the budget established by the Corporation under this subparagraph shall be used for funding the prodction of television and radio programs. Of such portion, a substantial amount shall be reserved for distribution to independence producers and production entities for the production of programs.

(ii) All funds contained in the annual budget established by the Corporation under clause (i) shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

(iii) During each of the fiscal years 1981, 1982, and 1983, the annual budget established by the Corporation under clause (i) shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A).

(iv) In determining the amount of funds which shall be made available for radio programming and operations under this subparagraph, the Corporation shall take into account the increased financial needs relating to radio programming and operations resulting from the expansion and development of noncommercial radio broadcast station facilities through the use of funds made available pursuant to section 393(d) of this title.

(C) In fiscal year 1981, the Corporation may expend an amount equal to not more than 5 percent of the funds made available by the Secretary of the Treasury during such fiscal year pursuant to paragraph (2)(A) for those activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B).

(D) In fiscal years 1982 and 1983, the amount which the Corporation may expend for activities authorized under subsection (g)(2) of this section which are not among those grant activities described in subparagraph (B) shall be 105 percent of the amount derived for the preceding fiscal year.

(4) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person's name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent

any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.

(5) Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (*l*)(3)(B) of this section.

(6)(A) The Corporation, in consultation with public television and radio licensees, shall review annually the percentage of funds reserved pursuant to paragraph (3)(A), and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations.

(B) The funds reserved for public broadcast stations pursuant to paragraph (3)(A) shall be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations. The Corporation shall make a basic grant from the portion reserved for television stations to each licensee and permittee of a publi television station that is on the air. The balance of the portion reserved for television stations and the total portion reserved for radio stations shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

(7) No distribution of funds pursuant to this subsection shall exceed, in any fiscal year, 50 percent of a licensee's or permittee's total non-Federal financial support during the fiscal year second preceding the fiscal year in which such distribution is made.

(8) The funds distributed pursuant to paragraph (3)(A) may be used at the discretion of the recipient for purposes relating to the provision of public television and radio programming, including, but not limited to—

(A) producing, acquiring, broadcasting, or otherwise disseminating public television or radio programs;

(B) procuring national or regional program distribution services that make public television or radio programs available for broadcast or other dissemination at times chosen by stations;

(C) acquiring, replacing, or maintaining facilities, and real property used with facilities, for the production, broadcast, or other dissemination of public television and radio programs; and

(D) developing and using nonbroadcast communications technologies for public television or radio programming purposes.

(9)(A) Funds may not be distributed pursuant to this subpart to any public broadcast station unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that the composition of its advisory board reasonably reflects the diverse needs and interests of the communities served by such station.

(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.

(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.

(D) In the case of any public broadcast station in existence on November 2, 1978, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after November 2, 1978.

(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

(10) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization) unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5.

(*l*) Financial management and records

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) Not later than 1 year after November 2, 1978, the Corporation, in consultation with

the Comptroller General, and as appropriate with others, shall develop accounting principles which shall be used uniformly by all public telecommunications entities receiving funds under this subpart, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities.

(B) Each public telecommunications entity receiving funds under this subpart shall be required—

(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

(ii) to undergo an annual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; and

(iii) to furnish annually to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(C) Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(D) The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and examining all funds received or expended for public telecommunications purposes by the recipient. The Comptroller General of the United States or any of his duly authorized representatives also shall have access to such books, documents, papers, and records for the purpose of auditing and examining all funds received or expended for public telecommunications purposes during any fiscal year for which Federal funds are available to the Corporation.

(As amended Nov. 2, 1978, Pub. L. 95-567, title III, §§ 301-303(a), 304-307(a), 308, 92 Stat. 2411, 2412, 2414, 2415, 2419.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-567, § 301, substituted the term "public" for "noncommercial educational" wherever appearing, substituted the term "telecommunications" for "radio and television" wherever appearing, and added provisions relating to the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services.

Subsec. (d)(1). Pub. L. 95-567, § 302, struck out provision authorizing the President to designate one of the members first appointed to the Board as Chairman.

Subsec. (e)(1). Pub. L. 95-567, § 303(a), added provision which regulated the rate of compensation an officer or employee of the Corporation could receive.

Subsec. (g). Pub. L. 95-567, § 304, amended subsection generally substituting "public telecommunications" for "educational broadcasting", "noncommercial educational television or radio", or "program production" wherever appearing, authorizing panel of outside experts to evaluate programs, authorizing Corporation to use its own judgment when dealing with programming, and striking out provision dealing with the creation of new noncommercial educational broadcast stations.

Subsec. (h). Pub. L. 95-567, § 305, designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 95-567, § 306, revised and restructured subsection and, as so restructured, substituted "September 30" for "June 30", "15th day of February" for "31st day of December", and added provisions comprising pars. (1)(B) and (C).

Subsec. (k). Pub. L. 95-567, § 307(a), completely revised and restructured subsec. (k) and, in so doing, added provisions establishing an annual budget, authorizing funds for the fiscal years 1978 to 1983, requiring funds be disbursed on a quarterly basis, requiring that all meetings of entities receiving funds be open to the public, and that the financial records of such entities be available for public examination.

Subsec. (*l*)(3). Pub. L. 95-567, § 308, completely revised and restructured par. (3) and, in so doing, added provisions requiring an annual audit, furnishing a copy of the audit report, and use of uniform accounting principals.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

COMPENSATION OF OFFICERS AND EMPLOYEES

Section 303(b) of Pub. L. 95-567 provided that: "The amendment made by subsection (a) [amending subsec. (e)(1) of this section] shall not be construed to reduce the annual rate of pay of any officer or employee of the Corporation for Public Broadcasting in any case in which (1) such officer or employee was appointed or named to any position in the Corporation before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(e)(1) of the Communications Act of 1934, as amended by subsection (a) [subsec. (e)(1) of this section]."

Section 307(b) of Pub. L. 95-567 provided that: "Section 396(k)(10) of the Communications Act of 1934, as added by subsection (a) [subsec. (k)(10) of this section], shall not be construed to reduce the annual rate of pay of any officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization) in any case in which (1) such officer or employee was appointed or named to any position in the Public Broadcasting Service or National Public Radio (or any successor organization) before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(k)(10) of the Communications Act of 1934, as added by subsection (a) [subsec. (k)(10) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 397, 398 of this title.

SUBPART D—GENERAL PROVISIONS

§ 397. Definitions

For the purposes of this part—

(1) The term "construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and modernization of public telecommunications facilities and planning and prepatory steps incidental to any such acquisition, installation, or modernization.

(2) The term "Corporation" means the Corporation for Public Broadcasting authorized to be established in subpart C.

(3) The term "interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to public telecommunications entities.

(4) The term "interconnection system" means any system of interconnection facilities used for the distribution of programs to public telecommunications entities.

(5) The term "meeting" means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body's business, or the committee's business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.

(6) The terms "noncommercial educational broadcast station" and "public broadcast station" mean a television or radio broadcast station which—

(A) under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.

(7) The term "noncommercial telecommunications entity" means any enterprise which—

(A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation, or association; and

(B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

(8) The term "nonprofit" (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term "non-Federal financial support" means the total value of cash and the fair market value of property and services (including, to the extent provided in the second sentence of this paragraph, the personal services of volunteers) received—

(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or instrumentality of the United States; or (ii) any public broadcasting entity; or

(B) as gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials with respect to the provision of educational or instructional television or radio programs.

Such term includes the fair market value of personal services of volunteers, as computed using the valuation standards established by the Corporation and approved by the Comptroller General pursuant to section 396(g)(5) of this title, but only with respect to such services provided to public telecommunications entities after such standards are approved by the Comptroller General and only, with respect to such an entity in a fiscal year, to the extent that the value of the services does not exceed 5 percent of the total non-Federal financial support of the entity in such fiscal year.

(10) The term "preoperational expenses" means all nonconstruction costs incurred by new telecommunications entities before the date on which they begin providing service to the public, and all nonconstruction costs associated with expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

(11) The term "public broadcasting entity" means the Corporation, any licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.

(12) The term "public telecommunications entity" means any enterprise which—

(A) is a public broadcast station or a noncommercial telecommunications entity; and

(B) disseminates public telecommunications services to the public.

(13) The term "public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including, but not limited to, studio equipment, cameras, microphones, audio and video storage or

reproduction equipment, or both, signal processors and switchers, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds, or intelligence, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

(14) The term "public telecommunications services" means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

(15) The term "Secretary" means the Secretary of Commerce when such term is used in subpart A, and the Secretary of Health, Education, and Welfare when such term is used in subpart B, subpart C, and this subpart.

(16) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(17) The term "system of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire, or distribute programs, or to undertake related activities.

(As amended Nov. 2, 1978, Pub. L. 95-567, title IV, § 401, 92 Stat. 2422.)

AMENDMENTS

1978—Pub. L. 95-567, revised the definition of the terms "construction", "corporation", "interconnection", "noncommercial educational broadcast station", "non-Federal financial support", "Secretary" and "State", added the definitions of the terms "meeting", "interconnection system", "noncommercial telecommunications entity", "preoperational expenses", "public telecommunications entity", "public telecommunications facilities", and "public telecommunications services", and deleted the definitions of the terms "educational television or radio programs" and "State educational television agency" in order to make such definitions consistent with the chapter as amended.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 17 sections 110, 111, 114, 118.

§ 398. Federal interference or control

(a) Prohibition

Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this chapter; or (2) except to the extent authorized in subsection (b) of this section, to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

(b) Equal opportunity employment

(1) Equal opportunity in employment shall be afforded to all persons by the Public Broadcasting Service and National Public Radio (or any successor organization) and by all public telecommunications entities receiving funds pursuant to subpart C (hereinafter in this subsection referred to as "recipients"), and no person shall be subjected to discrimination in employment by any recipient on the grounds of race, color, religion, national origin, or sex.

(2)(A) The Secretary is authorized and directed to enforce this subsection and to prescribe such rules and regulations as may be necessary to carry out the functions of the Secretary under this subsection.

(B) The Secretary shall provide for close coordination with the Commission in the administration of the responsibilities of the Secretary under this subsection which are of interest to or affect the functions of the Commission so that, to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public telecommunications entities shall be uniformly based upon consistent definitions and categories of information.

(3)(A) The Corporation shall incorporate into each grant agreement or contract with any recipient entered into on or after the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A), a statement indicating that, as a material part of the terms and conditions of the grant agreement or contract, the recipient will comply with the provisions of paragraph (1) and the rules and regulations prescribed pursuant to paragraph (2)(A). Any person which desires to be a recipient (within the meaning of paragraph (1)) of funds under subpart C shall, before receiving any such funds, provide to the Corporation any information which the Corporation may require to satisfy itself that such person is affording equal opportunity in employment in accordance with the requirements of this subsection. Determinations made by the Corporation in accordance with the preceding sentence shall be based upon guidelines relating to equal opportunity in employment which shall be established by rule by the Secretary.

(B) If the Corporation is not satisfied that any such person is affording equal opportunity in employment in accordance with the requirements of this subsection, the Corporation shall notify the Secretary, and the Secretary shall review the matter and make a final determination regarding whether such person is affording equal opportunity in employment. In any case in which the Secretary conducts a review under the preceding sentence, the Corporation shall

make funds available to the person involved pursuant to the grant application of such person (if the Corporation would have approved such application but for the finding of the Corporation under this paragraph) pending a final determination of the Secretary upon completion of such review. The Corporation shall monitor the equal employment opportunity practices of each recipient throughout the duration of the grant or contract.

(C) The provisions of subparagraph (A) and subparagraph (B) shall take effect on the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A).

(4) Based upon its responsibilities under paragraph (3), the Corporation shall provide an annual report for the preceding fiscal year ending September 30 to the Secretary on or before the 15th day of February of each year. The report shall contain information in the form required by the Secretary. The Corporation shall submit a summary of such report to the President and the Congress as part of the report required in section 396(i) of this title. The Corporation shall provide other information in the form which the Secretary may require in order to carry out the functions of the Secretary under this subsection.

(5) Whenever the Secretary makes a final determination, pursuant to the rules and regulations which the Secretary shall prescribe, that a recipient is not in compliance with paragraph (1), the Secretary shall, within 10 days after such determination, notify the recipient in writing of such determination and request the recipient to secure compliance. Unless the recipient within 120 days after receipt of such written notice—

(A) demonstrates to the Secretary that the violation has been corrected; or

(B) enters into a compliance agreement approved by the Secretary;

the Secretary shall direct the Corporation to reduce or suspend any further payments of funds under this part to the recipient and the Corporation shall comply with such directive. Resumption of payments shall take place only when the Secretary certifies to the Corporation that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose funds have been reduced or suspended under this paragraph may apply at any time to the Secretary for such certification.

(c) Control over content or distribution of programs

Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services, or over the curriculum or program of instruction of any educational institution or school system.

(As amended Nov. 2, 1978, Pub. L. 95-567, title III, § 309, 92 Stat. 2420.)

AMENDMENTS

1978—Pub. L. 95-567 designated existing provisions as subsec. (a) and, as so redesignated, substituted the terms "public telecommunications entity" and "public telecommunications" for "educational broadcasting station or system" and "educational television or radio broadcasting", respectively, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 396 of this title.

SUBCHAPTER IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

§ 402. Judicial review of Commission's orders and decisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 503 of this title; title 28 section 2342.

§ 410. Joint boards and commissions

CODIFICATION

Sections 302(b) and 305(f) of title 49, referred to in subsec. (c), were repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation, and are now covered by section 11506 and sections 10344(f) and 11502(a)(2), respectively, of Title 59.

SUBCHAPTER V—PENAL PROVISIONS: FORFEITURES

§ 503. Forfeitures

[See main edition for text of (a)]

(b) Activities constituting violations authorizing imposition of forfeiture penalty; amount of penalty; procedures applicable; persons subject to penalty; liability exemption period

[1] Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 509(a) of this title; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this chapter; except that this subsection shall not apply to any conduct which is subject to forfeiture under subchapter II of this chapter, part II or III of subchapter III of this chapter, or section 507 of this title.

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[1] So in original. Probably should be designated as par. (1).

(2) The amount of any forfeiture penalty determined under this subsection shall not exceed $2,000 for each violation. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

(A) $20,000, if the violator is (i) a common carrier subject to the provisions of this chapter, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

(B) $5,000, in any case not covered by subparagraph (A).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history or prior offenses, ability to pay, and such other matters as justice may require.

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a) of this title.

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this title.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier so long as such violation occurred within 3 years prior to the date of issuance of such required notice; or

(B) such person does not hold a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

(As amended Feb. 21, 1978, Pub. L. 95-234, § 2, 92 Stat. 33.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-234 substituted provisions relating to activities making persons liable for forfeiture penalties, amounts of forfeiture penalties, procedures applicable for imposition of forfeiture penalties, and exemptions from liability from imposition of forfeiture penalties, for provisions relating to activities of licensees or permittees constituting violations and authorizing forfeiture to the United States of a sum not to exceed $1,000 for each separate offense, procedures applicable for imposition of forfeiture liability, and limitations on imposition of forfeiture liability.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-234 effective on the thirtieth day after Feb. 21, 1978, except that the provisions of subsec. (b) of this section, as in effect on Feb. 21, 1978, shall continue to constitute the applicable law with respect to any act or omission which occurs prior to such thirtieth day, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

§ 504. Forfeitures

(a) Recovery

The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided,* That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo: *Provided further,* That in the case of forfeiture by a ship, said forfeiture may also be recoverable by way of libel in any district in which such ship shall arrive or depart. Such forfeitures shall be in addition to any other general or specific penalties provided in this chapter. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this chapter. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) Remission and mitigation

The forfeitures imposed by subchapter II of this chapter, parts II and III of subchapter III of this chapter, and sections 503(b) and 507 of this title shall be subject to remission or mitigation by the Commission under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however,* That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

[*See main edition for text of* (c)]

(As amended Feb. 21, 1978, Pub. L. 95-234, § 3, 92 Stat. 35.)

AMENDMENT

1978—Subsec. (a). Pub. L. 95-234, § 3(a), inserted in the first sentence ", except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title," immediately following "recoverable". Such wording was inserted only after the first reference to "recoverable" as the probable intent of Congress.

Subsec. (b). Pub. L. 95-234, § 3(b), added reference to subchapter II of this chapter and struck out reference to section 510 of this title and ", upon application therefor," following "by the Commission".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-234 effective on the thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 503 of this title.

§ 507. Violation of Great Lakes Agreement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 504 of this title.

§ 510. Repealed. Pub. L. 95-234, § 4, Feb. 21, 1978, 92 Stat. 35

Section, act June 19, 1934, ch. 652, title V, § 510, as added May 11, 1962, Pub. L. 87-448, § 1, 76 Stat. 68, set forth provisions relating to forfeitures for violations of rules and regulations by radio stations operating in common carrier, safety and special radio fields.

EFFECTIVE DATE OF REPEAL

Section repealed effective on the thirtieth day after Feb. 21, 1978, except that the provisions of this section, as in effect on Feb. 21, 1978, shall continue to constitute the applicable law with respect to any act or omission which occurs prior to such thirtieth day, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 601. Interstate Commerce Commission and Postmaster General; duties, powers, and functions transferred to Commission

CODIFICATION

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 605. Unauthorized publication or use of communications

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2511; title 50 section 1805.

§ 606. War powers of President

TRANSFER OF FUNCTIONS

The Office of Telecommunications Policy, referred to in Ex. Ord. No. 10705, Apr. 17, 1957, 22 F.R. 2729, set out under this section in the 1976 edition of this Code, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, and the functions of the Office and the Director thereof were transferred to the Secretary of Commerce by section 5B of Reorg. Plan No. 1 of 1977, except for those functions of the Office and the director thereof relating to the preparation of Presidential telecommunications policy operations and the disposition of appeals from assignments of radio fequencies to stations of the United States Government, which were transferred to the President by said section 5B of Reorg. Plan No. 1 of 1977 with power to delegate within the Executive Office of the President.

EXECUTIVE ORDER No. 10705

Ex. Ord. No. 10705, Apr. 17, 1957, 22 F.R. 2729, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, set out as a note under this section in the main edition, which related to the delegation of authority to the Director of the Office of Telecommunications Policy, was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out as a note under section 305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 309 of this title; title 18 section 2511.

§ 609. Citation of chapter

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95-567, § 1, Nov. 2, 1978, 92 Stat. 2405, provided: "That this Act [enacting section 395 of this title, amending sections 390 to 392, 393, 394, and 396 to 398 of this title, repealing sections 392a and 395 of this title, and enacting provisions set out as notes under sections 390, 392, and 396 of this title and section 5316 of Title 5, Government Organization and Employees] may be cited as the 'Public Telecommunications Financing Act of 1978'."

Pub. L. 95-234, § 1, Feb. 21, 1978, 92 Stat. 33, provided: "That this Act [enacting section 224 of this title, amending sections 152, 503, and 504 of this title, repealing section 510 of this title, and enacting provisions set out as a note under section 152 of this title] may be cited as the 'Communications Act Amendments of 1978'."

CHAPTER 6—COMMUNICATIONS SATELLITE SYSTEM

SUBCHAPTER V—INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS [NEW]

Sec.
751. Congressional declaration of policy and purpose.
(a) Development and operation of global system to serve needs of United States and foreign countries.
(b) Corporate participation; private entity status; non-Government agency.
752. Corporation's status as designated operating entity.
(a) Statement of purpose; interim operating arrangement authorization for participation in other systems; signature authorization.
(b) Interim operating arrangements for participation in other systems; terms and conditions; participation provisions also applicable to interim arrangements.
(c) Powers of corporation.
(d) Financial obligation.
(e) Sole ownership or/and operation of satellite earth terminal station for training of personnel pursuant to authorization of responsible executive department or Commission.
(f) Additional noncorporation ownership of satellite earth terminal stations for enhancement of maritime satellite services in the public interest.
(g) Operational arrangements for interconnection of satellite earth terminal stations and facilities with common carriers and private communications systems for extension of services; determinations by Commission; report to Congress.
(h) Articles of incorporation provision for business transactions during national emergency with less than requisite number of directors.
753. Implementation of policy.
(a) Administrative functions; agency coordination; use for general governmental purposes; separate systems; spectrum and orbital space use; compatibility with domestic and foreign facilities; interests and needs of ultimate users; Federal views on utilization and user needs.
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(d) Commission regulatory instructions; conflicting and prevailing instructions of President.
754. Study of structure and activities of corporation.
(a) Statement of objectives.
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755. Study of public maritime coast station services.
(a) Statement of objectives.
(b) Report to Congress; findings, conclusions and recommendations.
756. Study of radio navigation systems.
(a) Statement of objectives.
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757. Definitions.

SUBCHAPTER I—GENERAL PROVISIONS

§ 701. Congressional declaration of policy and purpose

SHORT TITLE

For short title of title V of Pub. L. 87-624, as added by Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2392, which enacted subchapter V of this chapter, see Short Title note set out under section 751 of this title.

SUBCHAPTER II—FEDERAL COORDINATION, PLANNING, AND REGULATION

§ 721. Implementation of policy

TRANSFER OF FUNCTIONS

The Office of Telecommunications Policy, referred to in Ex. Ord. No. 11191, Jan. 4, 1965, 30 F.R. 29, as amended by Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, set out under this section in the 1976 edition of this Code, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, and the functions of the Office and the Director thereof were transferred to the Secretary of Commerce by section 5B of Reorg. Plan No. 1 of 1977, except for those functions of the Office and the director thereof relating to the preparation of Presidential telecommunications policy operations and the disposition of appeals from assignments of radio frequencies to stations of the United States Government, which were transferred to the President by said section 5B of Reorg. Plan No. 1 of 1977 with power to delegate within the Executive Office of the President.

EXECUTIVE ORDER NO. 11191

Ex. Ord. No. 11191, Jan. 4, 1965, 30 F.R. 29, as amended by Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, set out as a note under this section in the main edition which related to the administration of the Communications Satellite Act of 1962 [this chapter], was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out as a note under section 305 of this title.

SUBCHAPTER V—INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS [NEW]

§ 751. Congressional declaration of policy and purpose

(a) Development and operation of global system to serve needs of United States and foreign countries

The Congress hereby declares that it is the policy of the United States to provide for the participation of the United States in the International Maritime Satellite Organization (hereinafter in this subchapter referred to as "INMARSAT") in order to develop and operate a global maritime satellite telecommunications system. Such system shall have facilities and services which will serve maritime commercial and safety needs of the United States and foreign countries.

(b) Corporate participation; private entity status; non-Government agency

It is the purpose of this subchapter to provide that the participation of the United States in INMARSAT shall be through the Communications Satellite Corporation, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

(Pub. L. 87-624, title V, § 502, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2392.)

SHORT TITLE

Pub. L. 87-624, title V, § 501, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2392, provided that: "This title [this subchapter] may be cited as the 'International Maritime Satellite Telecommunications Act'."

§ 752. Corporation's status as designated operating entity

(a) Statement of purpose; interim operating arrangement authorization for participation in other systems; signature authorization

(1) The Communications Satellite Corporation is hereby designated as the sole operating entity of the United States for participation in INMARSAT, for the purpose of providing international maritime satellite telecommunications services.

(2) The corporation also shall have authority to participate in any other maritime satellite telecommunications system on an interim basis to serve the maritime commercial and safety needs of the United States through an interim operating arrangement in accordance with subsection (b) of this section.

(3) The corporation may participate in and is hereby authorized to sign the operating agreement or other pertinent instruments of INMARSAT as the sole designated operating entity of the United States.

(b) Interim operating arrangements for participation in other systems; terms and conditions; participation provisions also applicable to interim arrangements

(1) The corporation may participate in any maritime satellite telecommunications system under subsection (a)(2) of this section only if—

(A) the corporation signs the operating agreement of INMARSAT before beginning such participation;

(B) such participation is in the nature of an interim operating arrangement remaining in effect only until INMARSAT begins its operations; and

(C)(i) in the case of participation which may be undertaken only pursuant to a treaty or executive agreement, such treaty or executive agreement is in effect; or

(ii) in any case in which participation does not require any treaty or executive agreement, the President does not disapprove such participation during the period of 60 calendar days after the corporation notifies the President of such proposed participation.

(2) If the corporation participates in an interim operating arrangement with a maritime satellite telecommunications system under this subsection, the provisions of this subchapter relating to participation of the corporation in INMARSAT also shall apply to such interim participation.

(3) Any disapproval by the President under paragraph (1)(C)(ii) shall be published in the Federal Register as soon as practicable after the date of such disapproval.

(c) Powers of corporation

The corporation—

(1) may own and operate satellite earth terminal stations in the United States;

(2) shall interconnect such stations, and the maritime satellite telecommunications provided by such stations, with the facilities and services of United States domestic common carriers and international common carriers, other than any common carrier or other entity in which the corporation has any ownership interest, as authorized by the Commission;

(3) shall interconnect such stations and the maritime satellite telecommunications provided by such stations, with the facilities and services of private communications systems, unless the Commission finds that such interconnection will not serve the public interest; and

(4) may establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities.

(d) Financial obligation

The corporation shall be responsible for fulfilling any financial obligation placed upon the corporation as a signatory to the operating agreement or other pertinent instruments, and any other financial obligation which may be placed upon the corporation as the result of a convention or other instrument establishing INMARSAT. The corporation shall be the sole United States representative in the managing body of INMARSAT.

(e) Sole ownership or/and operation of satellite earth terminal station for training of personnel pursuant to authorization of responsible executive department or Commission

(1) Any person, including the Federal Government or any agency thereof, may be authorized, in accordance with paragraph (2) or paragraph (3), to be the sole owner or operator, or both, of any satellite earth terminal station if such station is used for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such station, or in carrying out experimentation relating to maritime satellite telecommunications services.

(2) If the person referred to in paragraph (1) is the Federal Government or any agency thereof, such satellite earth terminal station shall have been authorized to operate by the executive department charged with such responsibility.

(3) In any other case, such satellite earth terminal station shall have been authorized by the Commission.

(f) Additional noncorporation ownership of satellite earth terminal stations for enhancement of maritime satellite services in the public interest

The Commission may authorize ownership of satellite earth terminal stations by persons other than the corporation at any time the Commission determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.

(g) Operational arrangements for interconnection of satellite earth terminal stations and facilities with common carriers and private communications systems for extension of services; determinations by Commission; report to Congress

The Commission shall determine the operational arrangements under which the corporation shall interconnect its satellite earth terminal station facilities and services with United States domestic common carriers and international common carriers, other than any common carrier, system, or other entity in which the corporation has any ownership interest, and private communications systems when authorized pursuant to subsection (c)(3) of this section for the purpose of extending maritime satellite telecommunications services within the United States and in other areas. The initial determination of operational arrangements shall be made by the Commission no later than 6 months after the effective date of this subchapter, and the Commission shall thereupon transmit to the Congress a report relating to such determination.

(h) Articles of incorporation provision for business transactions during national emergency with less than requisite number of directors

Notwithstanding any provision of State law, the articles of incorporation of the corporation shall provide for the continued ability of the board of directors of the corporation to transact business under such circumstances of national emergency as the President or his delegate may determine would not permit a prompt meeting of the number of directors otherwise required to transact business.

(Pub. L. 87-624, title V, § 503, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2392.)

REFERENCES IN TEXT

Effective date of this subchapter, referred to in subsec. (g), probably means date of enactment of Pub. L. 95-564, which was approved on Nov. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 753 of this title.

§ 753. Implementation of policy

(a) Administrative functions; agency coordination; use for general governmental purposes; separate systems; spectrum and orbital space use; compatibility with domestic and foreign facilities; interests and needs of ultimate users; Federal views on utilization and user needs

The Secretary of Commerce shall—

(1) coordinate the activities of Federal agencies with responsibilities in the field of telecommunications (other than the Commission), so as to ensure that there is full and effective compliance with the provisions of this subchapter;

(2) take all necessary steps to ensure the availability and appropriate utilization of the maritime satellite telecommunications services provided by INMARSAT for general governmental purposes, except in any case in which a separate telecommunications system is required to meet unique governmental needs or is otherwise required in the national interest;

(3) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compatibility of the space segment with existing communications facilites in the United States and in foreign countries; and

(4) take all necessary steps to determine the interests and needs of the ultimate users of the maritime satellite telecommunications system and to communicate the views of the Federal Government on utilization and user needs to INMARSAT.

(b) Executive functions; supervision and instructions for foreign relationships and activities

The President shall exercise such supervision over, and issue such instructions to, the corporation in connection with its relationships and activities with foreign governments, international entities, and INMARSAT as may be necessary to ensure that such relationships and activities are consistent with the national interest and foreign policy of the United States.

(c) Commission functions; institution of proceedings; recommendations for issuance of executive instructions; public space segment channel, construction, operation and other authorizations; review; rules

The Commission shall—

(1) institute such proceedings as may be necessary to carry out the provisions of section 752 of this title;

(2) make recommendations to the President for the purpose of assisting him in his issuance of instructions to the corporation;

(3) grant such authorizations as may be necessary under title II [47 U.S.C. 201 et seq.]

and title III [47 U.S.C. 301 et seq.] of the Communications Act of 1934 to enable the corporation—

(A) to provide to the public, in accordance with section 752(c)(2) of this title, space segment channels of communication obtained from INMARSAT; and

(B) to construct and operate such satellite earth terminal stations in the United States as may be necessary to provide sufficient access to the space segment;

(4) grant such other authorizations as may be necessary under title II and title III of the Communications Act of 1934 to carry out to the provisions of this title;

(5) establish procedures to provide for the continuing review of the telecommunications activities of the corporation as the United States signatory to the operating agreement or other pertinent instruments; and

(6) prescribe such rules as may be necessary to carry out the provisions of this subchapter.

(d) Commission regulatory instructions; conflicting and prevailing instructions of President

The Commission is authorized to issue instructions to the corporation with respect to regulatory matters within the jurisdiction of the Commission. In the event an instruction of the Commission conflicts with an instruction of the President pursuant to subsection (b) of this section, the instructions issued by the President shall prevail.

(Pub. L. 87-624, title V, § 504, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2394.)

REFERENCES IN TEXT

The Communications Act, referred to in subsec. (c)(2), (4), probably means the Communications Act of 1934, act June 19, 1934, ch. 652, 48 Stat. 1964, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. Titles II and III of the Communications Act of 1934 are classified generally to subchapters II (§ 201 et seq.) and III (§ 301 et seq.), respectively, of chapter 5 of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 754. Study of structure and activities of corporation

(a) Statement of objectives

The Commission shall conduct a study of the corporate structure and operating activities of the corporation, with a view toward determining whether any changes are required to ensure that the corporation is able to effectively fulfill its obligations and carry out its functions under this chapter and the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(b) Report to Congress; findings, conclusions and recommendations

The Commission shall transmit a report to the Congress not later than 18 months after November 1, 1978, relating to the study of the corporation conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

(Pub. L. 87-624, title V, § 505, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2395.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (a), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 755. Study of public maritime coast station services

(a) Statement of objectives

The Commission shall conduct a study of public maritime coast station services, with particular emphasis on high seas services, with a view toward determining whether the rules and regulations of the Commission and the assignment of licenses and radio frequencies in effect on the effective date of this subchapter should be subject to any alteration in order to establish a systematic approach for the provision of modern and effective maritime telecommunications systems.

(b) Report to Congress; findings, conclusions and recommendations

The Commission shall transmit a report to the Congress not later than 12 months after November 1, 1978, relating to the study of public maritime coast station services conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

(Pub. L. 87-624, title V, § 506, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2395.)

§ 756. Study of radio navigation systems

(a) Statement of objectives

The President, in conjunction with Government agencies which will or may be affected by the development of a Government-wide radio navigation plan, shall conduct a study of all Government radio navigation systems to determine the most effective manner of reducing the proliferation and overlap of such systems. The objective of such study shall be the development of such a plan.

(b) Report to Congress; findings, conclusions and recommendations

The President shall transmit a report to the Congress no later than 12 months after November 1, 1978, relating to the study conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the President related to such findings and conclusions, and any recommendations of the President for such legislation or other action as the President considers necessary or appropriate for implementation of a Government-wide radio navigation plan.

(Pub. L. 87-624, title V, § 507, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2396.)

§ 757. Definitions

For purposes of this subchapter—

(1) the term "person" includes an individual, partnership, association, joint stock company, trust, or corporation;

(2) the term "satellite earth terminal station" means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;

(3) the term "space segment" means any satellite (or capacity on a satellite) maintained under the authority of INMARSAT, for the purpose of providing international maritime telecommunications services, and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operation of such satellite; and

(4) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 87-624, title V, § 508, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2396.)